

East Carolina University Copyright Regulation

REG10.40.02 Current Version

Authority: Chancellor

History: First Issued: August 6, 2002. Last Revised: August 2, 2013

Related Policies: [UNC Policy 500.2 - Patent and Copyright Policies](#)
[UNC Policy 500.2.1\[R\] - Regulations for Establishing a Copyright Use and Ownership Policy](#)

[POL10.40.01](#) - East Carolina University Patent Policy

[RUL 08.05.04 - University Student and Employee Computer Use Policy](#)

Additional Resources: [U. S. Copyright Laws, Title 17 of the United States Code](#)

[N.C.G.S. \A7116-34 - Duties of Chancellor of Institution](#)

[ECU Disclosure Form for Copyright Ownership Determination](#)

[Independent Contractor Copyright Clause](#)

[Volunteer Agreement on Copyright](#)

[ECU Copyright Resources](#)

[ECU IT Policies, Regulations and Guidelines - Academic Computer Use Policy](#)

[ECU Graphics and Licensing Standards](#)

[ECU Policy Regarding Commercial Exploitation of Classroom Materials](#)

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1. INTRODUCTION

This regulation implements and affects the provisions of the Patent and Copyright Policies and the Regulations for Establishing a Copyright Use and Ownership Policy of the University of North Carolina (“UNC Polices”). This regulation should be read in conjunction with the UNC

Policies. By delegation of the Chancellor, the Vice Chancellor for Research and Graduate Studies (“Vice Chancellor”) shall administer ECU’s Copyright Regulation and develop and implement the procedures necessary for its administration.

This regulation seeks to balance the legitimate rights and responsibilities of ECU, its faculty, staff, and students in order to encourage a scholarly atmosphere that enhances ECU’s ability to meet its missions of teaching, research, and service.

2. DEFINITIONS

2.1 “Commercialization” means selling, licensing, or otherwise transferring some or all of the intellectual property rights in a work including grants of permission or a license to use the work.

Commercialization does not include the transmission of technical reports to the sponsor or submission of scholarly journal articles for publication, nor the provision of course materials (e.g., course packs) to the ECU Bookstore or similar vendor developed for use by students in conjunction with a specific ECU course.

2.2 “Creator” means the author of original expression in a work.

2.3. “Direct Costs” mean documented costs of production, financial support for creation of the work, sales, advertising, distribution, licensing, costs of obtaining patents, copyrights, stipends, and release time.

2.4. “Directed Work(s)” means a work(s) that is specifically funded or created at the direction of ECU. A Directed Work includes a work created as a specific requirement of employment or arising out of employment responsibilities at the University. In addition, a Directed Work shall include any Work produced as a collaborative effort initiated by a college or department, or a work that is created and then developed and improved over time by a series of individuals, where authorship cannot be attributed to any one individual or group of individuals. Computer software created by non-faculty University programmers for use by the University constitutes Directed Work. A Directed Work also includes a work created by faculty, staff, or students in a University institute, center, or other unit that, with approval of the Vice Chancellor, has adopted rules providing that copyright in materials authored by such faculty, staff, or students in the course of their professional work or course study with that unit vests in the University and not in its author. Absent Exceptional Use of University Resources (Subsection 2.6) or use of Sponsored Resources (Subsection 2.7), instructional materials or

courseware created by faculty members or instructors required to teach face-to-face, Distance Education, or correspondence courses as part of their employment responsibilities shall not be deemed Directed Works.

2.5. “Distance Education” or “Distance Learning” means a course in which more than fifty percent (50%) of instruction (interaction between students and instructors and among students) in a course occurs when students and instructors are not co-located. Instruction may be synchronous or asynchronous. The course may use internet, closed circuit, cable, fiber optics, DVDs, CD-ROM or other electronic means to facilitate learning.

2.6. “Exceptional Use of University Resources” means the University has provided support for the creation of the work with resources of a degree or nature not routinely made available to faculty, other EPA employees, SPA or CSS staff, or students. Except as is otherwise permitted by the University’s policies on Conflicts of Interest and Commitment, University resources are to be used solely for University purposes and not personal gain or personal commercial advantage, nor for any other non-University purposes. Exceptional Use of University Resources may include, but is not limited to: waiver of fees normally required to use specialized facilities such as equipment, production facilities, service laboratories, specialized computing resources, and studios; University funding or gifts in support of the work’s creation; or reduction in levels of teaching, service, or other typical University activities (e.g., course, load, student advising, division/department meetings, office hours, administrative responsibilities) specifically to facilitate creation of the work. In addition, use of the University’s name in connection with a personal work, other than by way of identification of the Creator as a faculty member, researcher or other employee or student at ECU, is itself Exceptional Use of University Resources. However, ordinary use of computers, laboratory space, libraries, office space or equipment, Distance Learning resources, limited secretarial or administrative services, or professional development activities shall not be considered Exceptional Use of University Resources. For students enrolled in a course of study, use of course laboratory, computing and library facilities, software, supplies and materials at a level ordinarily provided to students in the course are not considered to be Exceptional Use of University Resources.

2.7. “Sponsored or Externally Contracted Work” means any copyrightable work developed using funds supplied under a contract, grant, or other arrangement between the University and third parties, including a sponsored research agreement.

2.8. “Student” means any person from the time s/he accepts admission to ECU through the date of her/his graduation. This includes new students at Orientation, persons not currently enrolled but who are still seeking a degree from ECU, any person enrolled in a credit earning course offered by ECU, and teaching, graduate, and research assistants.

2.9. “Student Work” means a paper, computer program, thesis, dissertation, artistic and musical work, and other creative work made by University students that are produced outside any University employment, and are not Sponsored or Externally Contracted Work. Notes of classroom and laboratory lectures and exercises taken by Students shall not be deemed Student Works.

2.10 “Supervisor” means the individual to whom a covered individual reports (faculty, instructor, EPA employees, post-doctoral scholars, SPA, CSS staff, and student employees). They are typically the individuals who conduct the covered individual’s annual performance evaluation. In the case of faculty or instructor, the supervisor is typically a department chair. Other supervisors include office directors.

2.11. “Traditional or Non-Directed Work” means a pedagogical, scholarly, literary, or aesthetic (artistic) work originated by a faculty or other EPA employee or Post Doctoral Scholar resulting from non-directed effort. Examples of these works may include a textbook, manuscript, scholarly work, fixed lecture notes, Distance Learning materials not falling into one of the categories of this Regulation, a work of art or design, musical score, poem, film, video, audio recording, or other work of the kind that have historically been deemed in academic communities to be property of their Creator. A Traditional or Non-Directed Work also means any work created in the course of outside activities resulting from a contract between the individual directly and a third-party.

2.12. “University” means ECU and all of its undergraduate, graduate, and professional schools, colleges, centers, institutes, and administrative units.

2.13. “Work” means an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device (See, e.g., 17 USC §102(a)). Examples of these Works include: literary Works such as books, journal articles, poems, manuals, memoranda, tests, computer programs, instructional materials, Distance Education materials, databases, and bibliographies; musical Works including accompanying

words; dramatic Works including accompanying music; pantomimes and choreographic works; pictorial, graphic and sculptural Works, including photographs, diagrams, sketches, and integrated circuit masks; motion pictures and other audiovisual Works such as videotapes; sound recordings; and architectural Works.

2.14. “Work Made for Hire” means (a) a Work prepared by an SPA or CSS employee within the course and scope of his or her employment, or (b) a work specially ordered or commissioned for use as a contribution to a collective Work, as part of a motion picture or audiovisual Work, as a translation, as a supplementary Work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the Work shall be considered a Work made for hire. A Work created in the course of a student’s employment by the University shall be considered Work Made for Hire.

3. SCOPE AND COVERAGE

This regulation applies to all faculty, EPA employees (including postdoctoral scholars), SPA and CSS staff, and students of the University. Compliance with the terms of this regulation is a condition of employment for University faculty, EPA employees, and SPA and CSS staff, and of enrollment for University students. This regulation is subject to any applicable laws and regulations or to specific provisions in grants or contracts that govern rights in works subject to copyright created in connection with sponsored research.

4. FACULTY, STAFF, AND STUDENT USE OF WORKS SUBJECT TO COPYRIGHT

4.1. Appropriate Use of Works Subject to Copyright

The University is committed to complying with all applicable copyright laws. As an institution devoted to the creation, preservation, and dissemination of knowledge through teaching, research, and public service, the University supports the responsible, good faith exercise of full fair use and face-to-face instruction rights as codified in 17 U.S.C. §§ 107 and 110(1), by faculty, staff, and students in teaching, research, and service activities. Except as allowed by law, it is a violation of this regulation and law for University faculty, staff, or students to reproduce, distribute, display publicly, perform, digitally transmit, or prepare derivative works based upon a work subject to copyright without permission of the copyright owner.

4.2. Information and Education on Copyright Use

The Vice Chancellor shall be responsible for administering and implementing this Regulation. The Vice Chancellor or her/his designee shall:

- (a) provide the University community with information about copyright law, with a particular emphasis on the application of fair use in academic settings;
- (b) hold workshops to educate the University community about copyright and fair use; and
- (c) provide resources on copyright laws in general and on the application of fair use.

5. OWNERSHIP

5.1. Ownership by Faculty and EPA Employees

Consistent with academic freedom and tradition, Faculty, Non-Faculty EPA (Exempt from the State Personnel Act) Non-Faculty Employees, and Postdoctoral Scholars (collectively, “EPA Employees” herein) own Traditional or Non-Directed Work, including Distance Education material, unless the work is a Directed Work, created with the Exceptional Use of University Resources, a Sponsored or Externally Contracted Work, or a Work Made for Hire.

5.2. Ownership by SPA and CSS Employees

Work by any SPA (Employees Subject to the State Personnel Act) and CSS (Clinical Support Services Employees) employee is considered to be a Work Made for Hire and is owned by ECU. However, SPA and CSS employees own works created at their own initiative, outside the scope of their employment, and without Exceptional Use of University Resources. In addition, SPA and CSS employees may own a Work when the University formally waives ownership of the Work in writing or where there is a written agreement providing ownership to the employee in accordance with Subsection 7.2.4.

5.3. Ownership by Students

5.3.1. Subject to the provisions below, students (see Section 2.8) shall own the copyright in Student Works except where the Work:

- (a) is a Sponsored or Externally Contracted Work;
- (b) involves Exceptional Use of University Resources; or
- (c) is a Work Made for Hire.

5.3.2. Students are frequently involved in the creation of Works in

consultation with, or under the supervision of, University faculty and staff. Such Work may be related to coursework, research, extracurricular activities, or other University projects. In some circumstances, it is difficult to determine whether and to what extent the Students are acting as agents or employees of the University. When ownership of a Work is unclear, a written agreement with Student(s) regarding ownership of the Work should be considered, consistent with this regulation and after consideration of the parties' rights and interests. The Copyright Officer shall have resources available to faculty and students regarding such agreements.

5.4. University Ownership

The University owns any of the following Works:

- (a) Directed Work;
- (b) Work involving Exceptional Use of University Resources;
- (c) Sponsored or Externally Contracted Work, unless the contract specifically states otherwise; and
- (d) Work Made for Hire.

5.5. Works by Independent Contractors

Any Work produced for the University by an independent contractor shall be considered a Work Made for Hire and shall be owned by the University. No University unit or department shall enter into any agreement or arrangement for Work to be produced by an independent contractor without a written contract, signed by the authorized University designee, stating University ownership of the intellectual property in the Work. The approved Independent Contractor Copyright Clause should be incorporated into such agreements.

5.6. Volunteers

Volunteers shall retain the copyright to Works they create unless the University unit or department that has initiated or benefits from the Work obtains the copyright or license to use the work. If the volunteer service involves the creation of a Work that will be used by the University, the unit or department responsible for overseeing the Volunteer shall have the Volunteer execute a Volunteer Agreement to Grant Copyright License or Volunteer Agreement to Assign Copyright for the Work.

5.7. University's License in Works

5.7.1. As a condition of employment, EPA Employees shall be deemed

to have granted the University a perpetual, non-exclusive, non-transferrable, royalty-free license to use Traditional or Non-Directed Works and Sponsored or Externally Contracted Works owned by them for the University's own education or research use, unless such license will impede scholarly publication or similar activities, or violate provision of a contract between the EPA employee and a third-party.

5.7.2. As a condition of enrollment, University students shall be deemed to have granted the University a perpetual non-exclusive, non-transferrable, royalty-free license to use any Student Work created as part of an academic endeavor at the University, subject to the student's privacy rights under federal law.

5.8. Creator's License in Works

Where practicable, and subject to any additional terms or limitations made necessary by the University's licensing agreements with third parties, the University shall grant a non-exclusive, non-transferrable, royalty-free license to a University-owned Work for the Creator's own educational or research use.

5.9. Works Subject to Both Copyright and Patent Protection

Where an Invention or Creation is subject to protection under both patent law and copyright law, if the University decides to retain title to its patent rights, the Inventor/Creator shall assign all copyrights to the University.

6. DETERMINATION OF COPYRIGHT OWNERSHIP

6.1. Disclosure

6.1.1. When to Disclose

6.1.1.1. Subject to the provisions of Subsection 6.1.3 below, the following Works must be disclosed within three (3) business days after the Work is created:

- (a) Sponsored or Externally Contracted Works;
- (b) Works involving the creation of software that may have commercial application;
- (c) Works owned by the University where the work will be sold, licensed, displayed, performed, reproduced, or distributed for use outside the University; and
- (d) Works intended to be commercialized, subject to the provisions of subsection 6.1.3 below.

6.1.2. Whether to Disclose.

6.1.2.1. Except as delineated in section 6.1.1.1 above, generally there is no mandatory disclosure requirement for Works created by University employees or students when there is no intent to commercialize the Work.

6.1.2.2. If a Creator does not make use of any University resources in the course of creating the Work and complies with other applicable University policies, including those on Conflict of Interest and Commitment, the Creator is not required to disclose Work intended to be commercialized that result from such activities.

6.1.2.3. If a question exists regarding whether disclosure is required, the Creator should contact the ECU Copyright Officer (hereinafter "Copyright Officer").

6.1.3. How to Disclose

Disclosures must be made in writing to the Creator's Supervisor in the case of ECU employees and volunteers or the Copyright Officer in the case of Student Works developed pursuant to Subsection 5.3.1 herein. The Supervisor shall forward the disclosure to the Copyright Officer, with a copy to the dean of his or her respective college and to the Director of the Office of Technology Transfer ("OTT"). The disclosure will not be considered complete until all required information has been provided.

6.2. Determination of Ownership

6.2.1. Upon receipt of the disclosure, the Copyright Officer shall review the disclosure, confer with the Creator, and investigate all questions regarding the issue of ownership. Upon making a determination of ownership, the Copyright Officer shall report in writing to the Creator, with a copy to the dean of her or his respective college, to her or his Supervisor, and to OTT, his or her determination of the Work's owner.

6.2.2. If the Creator, dean, or OTT disagrees with the Copyright Officer's decision, the decision may be appealed as outlined in Subsection 8.3.

7. COMMERCIALIZATION OF A WORK

7.1. Employee or Student-Owned Works

7.1.1. A Creator who owns the copyright in her or his Work under this regulation may commercialize such Work, without the authority or

permission of the University, so long as the University's name is not used in connection with the Work, other than to identify the Creator as an employee or student at the University. Any use of the University's name in connection with a Work created by an employee or student must be approved in writing in advance by the Vice Chancellor. The Vice Chancellor may consult with the Director of the Office of Technology Transfer (OTT), the Director of Trademark Licensing, the Director of University Marketing, the University Counsel and Vice Chancellor for Legal Affairs, and others as appropriate concerning such proposed use.

7.1.2. A University employee or student who owns a Work pursuant to this regulation may seek assistance from the University in commercializing the work. In that instance, the Creator shall report the work to OTT using such forms or procedures as OTT shall establish. If, in its discretion, OTT decides to assist in commercialization of the Work, OTT and the Creator shall negotiate an agreement governing the commercialization of the Work. Any revenue from the commercialization shall be allocated according to Subsection 7.2.2 below.

7.1.3. Notes of classroom and laboratory lectures, syllabi, exercises and other course materials taken by Students shall not be deemed Student Works, may only be used for personal educational purposes, and shall not be used for commercialization by the Student generating such notes or by any third party without the express written permission of the author of such Works. Violation of University Policy may be grounds for disciplinary action pursuant with the ECU Student Conduct Process.

7.2. University-Owned Works

7.2.1. The University may, in its sole discretion, use and/or commercialize Works that it owns pursuant to this regulation.

7.2.2. When a Work owned by the University pursuant to this regulation is commercialized by OTT (in accordance with its guidelines and procedures), income from such commercialization shall be apportioned according to the East Carolina University Patent Policy.

7.2.3. If a University-owned Work is to be published and distributed solely for use by students and faculty at the University, such publication and distribution may be conducted by the University department that employs the Creator(s) or that proposes to use the Work. In such instance, the department may self-publish the Work, or may contract with an outside publisher, subject to the review and approval by the Director of the Office of Technology Transfer. The department shall

retain all net revenues related to the Work in this circumstance.

7.2.4. OTT may decline commercialization of a University-owned Work due to lack of resources, lack of commercial interest, or other reasons OTT deems appropriate. In such case, OTT may assign the Work to the Creator(s), subject to any rights retained by any sponsor or third party. In addition, the Creator shall agree (i) that the University reserves a royalty-free, non-exclusive, irrevocable right to use the Work for research and educational purposes; (ii) to allow other academic and non-profit institutions similar use on similar terms; and (iii) to indemnify the University against any liability arising from commercialization. Exceptions may be allowed in accordance with Section 9 below.

7.3. Works Subject to Both Copyright and Patent Protection

In cases where an Invention or Creation is subject to protection under both patent law and copyright law, if the University elects to retain title to its patent rights, the University shall be compensated in accordance with the revenue provision of its Patent Policy.

8. COPYRIGHT COMMITTEE

8.1. Appointment

The Copyright Committee shall consist of eleven (11) voting members, appointed by the Vice Chancellor, which shall serve as an advisory body to him or her and the Copyright Officer. The voting members of the Copyright Committee shall consist of five (5) faculty members, three (3) staff members, one postdoctoral scholar, one graduate student, and one representative of the Vice Chancellor, chosen for their familiarity with or involvement in copyright or other intellectual property matters. The Faculty Senate shall nominate to the Vice Chancellor five (5) faculty members to serve on the Copyright Committee. The faculty representative nominees shall include at least the Chair of the Faculty or his or her delegate, one Faculty Senator, one member of the Distance Education and Learning Technology Committee, one member of the Research/Creative Activity Grants Committee, and one at-large member elected by the Faculty Senate. The Staff Senate shall nominate to the Vice Chancellor three Staff Senate Members to serve on the committee. The Graduate School shall nominate to the Vice Chancellor one graduate student to serve on the Committee. The Office of Postdoctoral Affairs shall nominate one postdoctoral scholar to serve on the Committee. The Vice Chancellor may also appoint ex officio non-voting members of the Committee from offices such as Technology Transfer, Libraries, ITCS, University Counsel, and the Divisions of Academic Affairs, Health

Sciences, Research and Graduate Studies, and Student Affairs. The Copyright Officer shall serve as a non-voting ex officio member of the Copyright Committee.

8.2. Duties

8.2.1. The Copyright Committee may be asked to:

- (a) review, recommend, and advise the University on matters relating to this Regulation;
- (b) identify areas in which policy development is needed and recommend to the Chancellor new or revised University policies and guidelines;
- (c) review the operation of this Regulation and make recommendations for change when needed;
- (d) assist in identifying educational needs of faculty and others related to compliance with copyright policies and guidelines and advising on appropriate ways to address those needs;
- (e) serve as a committee to which a Creator may appeal the Copyright Officer's decisions;
- (f) meet at least once each Fall and Spring Academic Semester; and
- (g) advise the Vice Chancellor regarding exceptions to this Regulation.

8.2.2. The Copyright Committee shall elect annually a Chair from its membership who is responsible for ensuring that the Committee executes its duties in a timely manner as requested pursuant to Section 8.2.1.

8.3. Appeals

When the Creator, dean, or OTT disputes a decision taken in application of this Regulation by the Copyright Officer, he or she may file a written appeal to the Vice Chancellor or her or his designee within ten (10) University business days of receiving the Copyright Officer's decision. The Creator, dean, or OTT shall be entitled to appear before the Copyright Committee and present evidence with respect to any matter specifically involving the application of this Regulation to her or his Work. The Copyright Committee will review the matter and make a recommendation to the Vice Chancellor. The Vice Chancellor will conduct any further investigation deemed necessary and will issue the final University written decision to the employee or Student and the Copyright Committee.

8.4. Appeals Procedure

8.4.1. Jurisdiction. Review of all matters related to appeal of the

Copyright Officer's decision under Section 8.4 of this Regulation shall fall under the exclusive jurisdiction of the Copyright Committee, subject to the final decision of the Vice Chancellor.

8.4.2. Appointment of the Appeal Panel. Upon notification from the Vice Chancellor that s/he or has received a timely filed written appeal pursuant to Section 8.3 above, the Chair of the Copyright Committee shall appoint a five (5) member Appeal Panel ("the Panel") to hear appeals with at least three (3) Panel members being selected from the general membership of the Copyright Committee and provided further that if a party with an interest in the appeal is an ECU faculty member then at least three (3) members of the Appeal Panel will be faculty members without administrative appointment. The University shall provide appropriate support to the Panel including, but not limited to, legal assistance from University Counsel and Vice Chancellor for Legal Affairs.

8.4.3. Conflicts of Interest. In the event that the appeal involves the Chair of the Copyright Committee, the Vice Chancellor shall appoint the Panel in accordance with the provision of Subsection 8.4.2. Prior to hearing the appeal, all Panel members shall disclose any personal, professional, or financial conflicts of interest, and shall recuse themselves from the Panel as appropriate. The Chair or Vice Chancellor, respectively, shall appoint a substitute member(s) as necessary. The Panel shall elect a chair from its membership to facilitate hearing of the appeal.

8.4.4. Conduct of the Hearing. All parties to the dispute will be given an opportunity to present evidence and arguments in support of their respective positions. The hearing shall be conducted in accordance with procedures adopted by the Chair of the Panel. A party may be accompanied to the hearing by a non-participating advisor, provided that, if the advisor is an attorney, then an attorney from the Office of University Counsel shall also be present at the hearing. The Copyright Officer may present testimony and evidence during the appeal, but may not serve as chair of the Panel hearing the appeal.

8.4.5. Disposition. Pursuant to Section 8.3 of this Regulation, the Panel shall report its written findings of fact and its recommendation(s) for disposition of the appeal to the Vice Chancellor. Copies of this report shall be provided to the parties to the appeal.

9. EXCEPTIONS

Exceptions to this Regulation may be approved by the Vice Chancellor if consistent with UNC Policies and federal and state law. The Vice Chancellor will request that the Copyright Committee consider a request for an exception to this Regulation and make a recommendation to her or him concerning the same. The decision of the Vice Chancellor is final.

10. ECU OFFICE OF COPYRIGHT

There shall be an ECU Office of Copyright under the direction of the ECU Copyright Officer. The Provost shall appoint the Copyright Officer. In addition to the Copyright Officer's other duties as described herein, he or she shall assist the Vice Chancellor in fulfilling information and education obligations established under Subsection 4.2 of this Regulation. The ECU Office of Copyright shall serve as the University's primary resource on Copyright, and the Copyright Officer shall be available to assist faculty, staff, postdoctoral scholars, and Students with copyright issues. The Office shall develop training and education materials for use by the campus community, and coordinate workshops, conferences, seminars, and other similar activities on copyright.